

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHIGENIX, INC.
Petitioner

v.

IMMUNOGEN, INC.
Patent Owner

Case IPR2014-00676
U.S. Patent No. 8,337,856
Title: METHODS OF TREATMENT USING ANTI-ERBB
ANTIBODY-MAYTANSINOID CONJUGATES

Before FRANCISCO C. PRATS, JACQUELINE WRIGHT BONILLA, and
ZHENYU YANG, Administrative Patent Judges

PETITIONER'S NOTICE OF APPEAL

PHIGENIX, INC.,)
Petitioner and Appellant,)
)
v.)
)
IMMUNOGEN, INC.,)
Patent Owner and Appellee,)
)
and)
)
DIRECTOR, UNITED STATES)
PATENT AND TRADEMARK)
OFFICE,)
Appellee.)
)

NOTICE OF APPEAL

In re U.S. Patent No. 8,337,856 B2
Inter Partes Review No. IPR2014-
00676

To the Director of the Patent and Trademark Office:

Petitioner Phigenix, Inc. hereby notices its appeal from the Patent Trial and Appeal Board Final Decision dated October 27, 2015 [Paper 39], and all adverse rulings or orders leading up to the Final Decision.

In addition to other issues that may be raised on appeal, Petitioner states, pursuant to 37 C.F.R. § 90.2(a)(3)(ii), that the appeal may raise one or more of the following legal issues:

(a) Whether the Board erred in ruling that, under the preponderance of the evidence standard, claims 1-8 of the U.S. Patent No. 8,337,856 would not have been obvious over the prior art presented to the Board;

(b) Whether the Board erred in denying Petitioner's motion to exclude certain evidence, including Exhibits 2240-2240, 2256, 2319, and 2320, and the testimony of Patent Owner's expert witness; and

(c) Any finding or determination supporting or related to those issues, as well as all other issues decided adversely to Petitioner in any orders, decisions, rulings, and opinions.

In addition to the filing of this Notice of Appeal with the Director, the requisite copies of this notice and all related fees are being filed in the United States Patent Office's Patent Trial and Appeal Board and in the United States Court of Appeals for the Federal Circuit.

No fees are believed to be due to the United States Patent and Trademark Office in connection with this filing, but authorization is hereby given for any required fees to be charged to the Andrews Kurth, LLP Deposit Account No. 50-2849.

Respectfully submitted this 22nd day of December, 2015.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Petitioner,

v.

IMMUNOGEN, INC.,
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Case IPR2014-00676
Patent 8,337,856 B2

Before FRANCISCO C. PRATS, JACQUELINE WRIGHT BONILLA, and
ZHENYU YANG, *Administrative Patent Judges*.

BONILLA, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Phigenix Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–8 of U.S. Patent No. 8,337,856 (“the ’856 patent”). Paper 5 (“Pet.”). Immunogen, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”). Thereafter, we determined that the information presented in the Petition demonstrated that there was a reasonable likelihood that Petitioner would prevail in showing claims 1–8 as unpatentable. Paper 11 (“Dec. to Inst.”), 2, 23. Pursuant to 35 U.S.C. § 314, we instituted this proceeding on October 29, 2014, to review whether claims 1–8 of the ’856 patent would have been obvious under 35 U.S.C. § 103 over Chari 1992¹ in view of the HERCEPTIN[®] Label,² further in view of Rosenblum 1999³ and Pegram 1999.⁴ *Id.* at 23.

After institution of trial, Patent Owner filed a Patent Owner Response. Paper 18 (“PO Resp.”), and Petitioner filed a Reply to the Response. Paper

¹ Chari et al., *Immunoconjugates Containing Novel Maytansinoids: Promising Anticancer Drugs*, 52 *CANCER RES.* 127–131 (1992) (“Chari 1992”) (Ex. 1012).

² HERCEPTIN[®] (Trastuzumab) Label, dated September 1998 (“the HERCEPTIN[®] Label”) (Ex. 1008).

³ Rosenblum et al., *Recombinant Immunotoxins Directed against the c-erbB-2/HER2/neu Oncogene Product: In Vitro Cytotoxicity, Pharmacokinetics, and In Vivo Efficacy Studies in Xenograft Models*, 5 *CLIN. CANCER RES.* 865–874 (1999) (“Rosenblum 1999”) (Ex. 1018).

⁴ Pegram et al., *Inhibitory effects of combinations of HER-2/neu antibody and chemotherapeutic agents used for treatment of human breast cancers*, 18 *ONCOGENE* 2241–2251 (1999) (“Pegram 1999”) (Ex. 1020).

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